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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11	GERRY RENEE POTTS,)	Case No.: 1:21-cv-0625 JLT
12	Plaintiff,)	
13	v.)	ORDER DIRECTING THE CLERK TO ISSUE
14	ANDREW SAUL,)	SUMMONS, SOCIAL SECURITY CASE
15	Commissioner of Social Security,)	DOCUMENTS, AND SCHEDULING ORDER
16	Defendant.)	ORDER STAYING CASE PURSUANT TO
)	GENERAL ORDER 615

17 Gerry Renee Potts seeks judicial review of the administrative decision denying an application
18 for Social Security benefits. (Doc. 4) Previously, the Court dismissed the complaint with leave to
19 amend. (Doc. 3) On April 21, 2021, Plaintiff filed a First Amended Complaint, which is now before
20 the Court for screening. (Doc. 4) For the following reasons, the Court finds issuance of the new case
21 documents is appropriate.

22 **I. Screening Requirement**

23 When an individual seeks to proceed *in forma pauperis*, the Court is required to review the
24 complaint and shall dismiss a complaint, or portion of the complaint, if it is “frivolous or malicious,”
25 “fails to state a claim upon which relief may be granted; or . . . seeks monetary relief from a defendant
26 who is immune from such relief.” 28 U.S.C. § 1915(e)(2). The Court must screen the First Amended
27 Complaint because it supersedes the previously filed complaint. *See Forsyth v. Humana*, 114 F.3d
28 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).

A plaintiff's claim is frivolous "when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them." *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992). Thus, a court may dismiss a complaint as frivolous under Section 1915 based on a relevant statute of limitations where it is obvious from the face of the complaint that the asserted claim is barred. *See Franklin v. Murphy*, 745 F.2d 1221, 1228-30 (9th Cir. 1984); *see also Street v. Vose*, 936 F.2d 38, 39 (1st Cir. 1991) ("a complaint which states a claim that appears to have expired under the applicable statute of limitations may be dismissed as frivolous" under the screening provision of Section 1915).

II. Pleading Standards

General rules for pleading complaints are governed by the Federal Rules of Civil Procedure. A pleading must include a statement affirming the court's jurisdiction, "a short and plain statement of the claim showing the pleader is entitled to relief; and ... a demand for the relief sought, which may include relief in the alternative or different types of relief." Fed. R. Civ. P. 8(a). The purpose of the complaint is to give the defendant fair notice of the claims, and the grounds upon which the complaint stands. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). The Supreme Court noted,

Rule 8 does not require detailed factual allegations, but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do. Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement.

Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009) (internal quotation marks and citations omitted). Vague and conclusory allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d 266, 268 (9th Cir. 1982). The Court clarified further,

[A] complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." [Citation]. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. [Citation]. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. [Citation]. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'"

Iqbal, 556 U.S. at 679 (citations omitted). When factual allegations are well-pled, a court should assume their truth and determine whether the facts would make the plaintiff entitled to relief; legal

1 conclusions are not entitled to the same assumption of truth. *Id.* The Court may grant leave to amend a
2 complaint to the extent deficiencies of the complaint can be cured by an amendment. *Lopez v. Smith*,
3 203 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc).

4 **III. Discussion and Analysis**

5 Plaintiff seeks review of a decision by the Commissioner of Social Security denying disability
6 benefits. (Doc. 4) The Court may have jurisdiction pursuant to 42 U.S.C. § 405(g), which provides:

7 Any individual, after any final decision of the Commissioner made after a hearing to
8 which he was a party, irrespective of the amount in controversy, may obtain a review of
9 such decision by a civil action commenced within sixty days after the mailing to him of
10 such decision or within such further time as the Commissioner may allow. Such action
11 shall be brought in the district court of the United States for the judicial district in
which the plaintiff resides, or has his principal place of business . . . The court shall
have power to enter, upon the pleadings and transcript of the record, a judgment
affirming, modifying, or reversing the decision of the Commissioner of Social Security,
with or without remanding the cause for a rehearing.

12 *Id.* Except as provided by statute, “[n]o findings of fact or decision of the Commissioner shall be
13 reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. § 405(h).

14 Plaintiff seeks to appeal the final administrative decision denying an application for benefits.
15 (Doc. 4 at 1-2) Plaintiff asserts the Appeals Council affirmed the ALJ’s decision on February 19, 2021.
16 (*Id.* at 2) Thus, any request for judicial review was to be filed no later than April 25, 2021. Because
17 Plaintiff initiated this action by filing his complaint on April 15, 2021, the request for judicial review
18 was timely.

19 **IV. Conclusion and Order**

20 Plaintiff’s complaint states a cognizable claim for review of the administrative decision denying
21 Social Security benefits. Based upon the foregoing, the Court **ORDERS**:

22 1. The Clerk of Court is **DIRECTED** to issue summons as to Andrew Saul, Commissioner
23 of Social Security;

24 2. The Clerk of Court is **DIRECTED** to issue and serve Plaintiff with Social Security Case
25 Documents, including the Scheduling Order, Order regarding Consent, the Consent Form, and USM-
26 285 Forms;

27 3. The U.S. Marshal is **DIRECTED** to serve a copy of the First Amended Complaint
28 (Doc. 4), summons, and this order upon the defendant as directed by Plaintiff in the USM Forms; and

IT IS SO ORDERED.

/s/ Jennifer L. Thurston
CHIEF UNITED STATES MAGISTRATE JUDGE